

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 YEVGENTY DIKLER,

4 Plaintiff,

5 -against-

6 THE CITY OF NEW YORK, DETECTIVE MICHAEL
7 VISCONTI, SHIELD 06482, SECURITY OFFICER
8 WILSON VEGA, HWA, INC.,

9 Defendants.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF NEW YORK

12 LAJZER GRYNSZTAIN,

13 Plaintiff,

14 -against-

15 THE CITY OF NEW YORK, DETECTIVE MICHAEL
16 WILLIAMS, SHIELD 06409, SECURITY OFFICER
17 WILSON VEGA, HWA, INC.,

18 Defendants.

19
20
21
22
23 MAY 21, 2008

24
25 11:55 A.M.

Page 2

MAY 21, 2008

11:55 A.M.

EXAMINATION BEFORE TRIAL of the
 DEFENDANTS by MICHAEL VISCONTI taken by the
 PLAINTIFFS, pursuant to Order, held at the
 office of Lester Schwab Katz & Dwyer, 120
 Broadway, New York, New York taken before
 Mindy Corcoran, a Shorthand Reporter and
 Notary Public of the State of New York.

* * *

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* * *

IT IS HEREBY STIPULATED AND AGREED, by and
 among counsel for the respective parties
 hereto, that the filing, sealing and
 certification of the within deposition shall
 be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that
 all objections, except as to form of the
 question, shall be reserved to the time of the
 trial;

IT IS FURTHER STIPULATED AND AGREED that
 the within deposition may be signed before any
 Notary Public with the same force and effect
 as if signed and sworn to before the Court.

* * *

Page 3

APPEARANCES:

DAVID A. ZELMAN, ESQ.
 Attorney for Plaintiffs
 612 Eastern Parkway
 Brooklyn, New York 11225

MICHAEL A. CARDOZO
 Corporation Counsel of the
 City of New York
 Special Federal Litigation Unit
 100 Church Street
 New York, New York 10007

BY: JOYCE CAMPBELL PRIVETERRE, ESQ.

LESTER SCHWAB KATZ & DWYER
 Attorneys for Defendant HWA, Inc.
 120 Broadway
 New York, New York

BY: LEONARD SILVERMAN, ESQ.

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M. Visconti

MICHAEL VISCONTI,
 the Witness herein, having first been duly
 sworn by the Notary Public, was examined
 and testified as follows:

EXAMINATION BY
 MR. ZELMAN:

Q. Would you please state your name
 for the record.

A. Michael Visconti.

Q. What is your present business
 address?

A. 11-40 45th Road, Long Island,
 New York 11701.

Q. Good morning.

A. Good morning.

Q. My name is David Zelman, and I
 represent the Visconti plaintiffs. I am going
 to ask you some questions today with respect
 to a case called Dikler versus The City of New
 York, et al.

If at any time you do not
 understand my question just let me know and I
 will try to rephrase it for you.

You understand that if there is

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1 M. Visconti
 2 a question pending, your counsel is not
 3 allowed to speak to you about it. The only
 4 thing he can do is object to the form of the
 5 question.
 6 Do you understand that?
 7 A. Yes.
 8 Q. You could take a break at any
 9 time, but you have to answer any questions
 10 that are pending. Okay?
 11 A. Yes.
 12 Q. Have you ever testified before?
 13 A. Yes.
 14 Q. Have you ever testified in a
 15 civil case before?
 16 A. Yes.
 17 Q. And how many times have you
 18 testified in a civil case?
 19 A. Once, I believe.
 20 Q. Have you ever testified in a
 21 deposition forum like this?
 22 A. Yes.
 23 Q. Was that also a case brought
 24 against you as a sergeant, police officer or a
 25 detective?

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1 M. Visconti
 2 A. Yes.
 3 Q. What was the name of that case?
 4 MS. PRIVETERRE: If you can
 5 remember.
 6 A. Clanton versus New York City.
 7 Q. What was that?
 8 A. Clanton.
 9 Q. Do you know how to spell that?
 10 A. C-L-A-N-T-O-N.
 11 Q. Was that a false arrest case?
 12 A. I am not sure. I think so.
 13 Q. What court was that case in?
 14 A. I don't know.
 15 Q. Did you testify here in
 16 Manhattan?
 17 A. It was a deposition.
 18 Q. At a deposition?
 19 A. Yes.
 20 Q. Did it go to trial, if you know?
 21 A. No, I don't know.
 22 Q. Do you remember the allegations
 23 in that case?
 24 A. I am not sure. I think it was
 25 a false arrest.

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1 M. Visconti
 2 Q. What year was it that you
 3 testified in that case?
 4 A. I don't understand the question.
 5 Q. What year did you testify in
 6 that case?
 7 A. This year.
 8 Q. 2008?
 9 A. Yes.
 10 Q. And the corporation counsel was
 11 your attorney?
 12 A. Yes.
 13 Q. Do you know if the case is still
 14 pending?
 15 A. I am not sure.
 16 Q. Was that the only time you
 17 testified in a civil case other than today?
 18 A. Yes.
 19 Q. You are now a detective; is that
 20 correct?
 21 A. Yes.
 22 Q. What is your title?
 23 A. Detective-investigator.
 24 Q. How long has that been your
 25 title?

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1 M. Visconti
 2 A. Since May of 2002, I believe.
 3 Q. Prior to that, what was your
 4 title?
 5 A. Detective-specialist.
 6 Q. Do you remember when you got
 7 that title?
 8 A. July of '99.
 9 Q. Prior to that?
 10 A. Police officer.
 11 Q. When did you become a police
 12 officer?
 13 A. 1992.
 14 Q. Did you do street patrol?
 15 A. Yes.
 16 Q. How long?
 17 A. Up until 2002.
 18 Q. From 1992 until 2002?
 19 A. Yes.
 20 Q. So it was approximately ten
 21 years?
 22 A. Yes.
 23 Q. Were you at the same precinct or
 24 did you work at different precincts?
 25 A. I stayed at the same precinct.

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1 M. Visconti
 2 Q. What precinct?
 3 A. 108th.
 4 Q. Is that in Queens?
 5 A. Yes.
 6 Q. As an officer at the 108th, did
 7 you perform more than 100 arrests?
 8 A. Yes.
 9 Q. Ranging from murders, rapes to
 10 shoplifting, et cetera?
 11 MS. PRIVETERRE: Objection to
 12 the form.
 13 Can you break that down?
 14 Q. And so you did all types of
 15 arrests?
 16 A. Yes.
 17 Q. And when you became a
 18 detective-specialist, were you assigned to a
 19 specific unit?
 20 A. Patrol.
 21 Q. Patrol?
 22 A. Yes.
 23 Q. Did you remain on patrol as a
 24 detective-specialist?
 25 A. Yes.

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1 M. Visconti
 2 Q. Are you still on patrol now?
 3 A. No.
 4 Q. When did you stop being on
 5 patrol?
 6 A. May of 2002.
 7 Q. Where are you stationed now?
 8 MS. PRIVETERRE: Do you mean
 9 what command he is at?
 10 A. Could you repeat the question,
 11 please?
 12 Q. Where do you report to work?
 13 A. Do you want the address?
 14 Q. The command.
 15 A. Internal affairs bureau.
 16 Q. Did there come a time that you
 17 worked at 26 Federal Plaza?
 18 A. No.
 19 Q. Were you ever present there in a
 20 working capacity?
 21 A. Yes.
 22 Q. How often were you present there
 23 in a working capacity? Was it more than a
 24 month? Was it more than a year?
 25 MS. PRIVETERRE: Are you asking

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1 M. Visconti
 2 how long ago?
 3 MR. ZELMAN: No, just for how
 4 long.
 5 MS. PRIVETERRE: In his entire
 6 career?
 7 MR. ZELMAN: At 26 Federal
 8 Plaza, the amount of time he was working
 9 there.
 10 A. I was there on individual days
 11 at a time.
 12 Q. Why would you get called in to
 13 26 Federal Plaza?
 14 MS. PRIVETERRE: Objection to
 15 the form. He didn't say he was called
 16 in.
 17 Q. Did you get called in to 26
 18 Federal Plaza?
 19 A. Could you rephrase the question?
 20 Q. What brought you to 26 Federal
 21 Plaza?
 22 MS. PRIVETERRE: When?
 23 Q. The first time you went there.
 24 A. I was sent there.
 25 Q. By whom?

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1 M. Visconti
 2 A. By my superiors.
 3 Q. At the internal affairs?
 4 A. Yes.
 5 Q. What was the purpose?
 6 A. There were individuals there who
 7 had duplicate shields.
 8 Q. On how many working days were
 9 you at 26 Federal Plaza investigating
 10 duplicate shields or shield issues?
 11 A. I don't know.
 12 Q. Was it more than a month?
 13 A. No.
 14 Q. Was it less than a month?
 15 A. Yes.
 16 Q. Was it more than two weeks?
 17 A. No.
 18 Q. Was it less than two weeks?
 19 A. Yes.
 20 Q. Was it more than five days?
 21 A. Was it a total of maybe five
 22 days.
 23 Q. Five days total?
 24 A. Yes.
 25 Q. You were the arresting officer

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1 M. Visconti
 2 for Mr. Dikler; is that correct?
 3 A. Yes.
 4 MS. PRIVETERRE: Objection to
 5 the form.
 6 Q. Were there any other persons at
 7 26 Federal Plaza that you arrested for
 8 badge-related issues?
 9 MS. PRIVETERRE: When?
 10 MR. ZELMAN: At any other time.
 11 A. Me personally?
 12 Q. Yes.
 13 A. No.
 14 Q. He was your only arrest at 26
 15 Federal Plaza for a badge-related issues?
 16 MS. PRIVETERRE: Do you
 17 understand what he is asking?
 18 A. Me, as me being the arresting
 19 officer?
 20 Q. Yes.
 21 A. Yes.
 22 Q. The five times that you went
 23 there, that was each time to investigate a
 24 badge-related issue?
 25 MS. PRIVETERRE: Objection.

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1 M. Visconti
 2 A. I don't know. I don't know if
 3 every single occurrence was for that
 4 specifically.
 5 Q. How many times did you report to
 6 26 Federal Plaza for a badge-related issue?
 7 A. I don't know.
 8 Q. More than once?
 9 A. Yes.
 10 Q. More than twice?
 11 A. Yes.
 12 Q. More than three times?
 13 A. I don't know.
 14 Q. This arrest occurred on March
 15 22, 2006; is that correct?
 16 A. I think so, yes.
 17 Q. These other times that you
 18 reported to 26 Federal Plaza for a
 19 badge-related issue, do you remember if it was
 20 before this time or after this time?
 21 A. It was probably before and
 22 after. I am not certain.
 23 Q. Was it in approximately March of
 24 2006 or other months?
 25 MS. PRIVETERRE: Objection to

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1 M. Visconti
 2 the form. Do you know what he is
 3 asking?
 4 A. Rephrase the question.
 5 Q. The other times you reported to
 6 26 Federal Plaza to investigate a
 7 badge-related issue; do you recall if it was
 8 in March of 2006?
 9 A. No.
 10 Q. Do you remember if it was in a
 11 different month?
 12 A. I am not sure what month it was.
 13 Q. Do you recall if it was in 2006?
 14 A. I am not sure.
 15 Q. Have you ever been to 26 Federal
 16 Plaza in 2008 to investigate a badge-related
 17 issue?
 18 A. No.
 19 Q. When you were sent to 26 Federal
 20 Plaza on the Dikler case, who sent you?
 21 MS. PRIVETERRE: Objection.
 22 What do you mean by sent?
 23 Q. When you were informed to go
 24 there, who informed you?
 25 A. I received a phone call from one

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1 M. Visconti
 2 of the supervisors at the office.
 3 Q. Do you remember the person's
 4 name?
 5 A. No.
 6 Q. Was it a supervisor at internal
 7 affairs?
 8 A. Yes.
 9 Q. Is it common that you would get
 10 a call from a supervisor at internal affairs
 11 to go to a specific location and investigate a
 12 certain allegation or crime?
 13 MS. PRIVETERRE: Objection to
 14 the form. What do you mean by common?
 15 Q. You could answer the question.
 16 MS. PRIVETERRE: I don't know
 17 what common means.
 18 Q. Is it typical in your
 19 performance --
 20 MS. PRIVETERRE: I don't know
 21 what typical means.
 22 MR. ZELMAN: Excuse me,
 23 counselor.
 24 MS. PRIVETERRE: I don't know
 25 what typical means.

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1 M. Visconti
 2 MR. ZELMAN: Look it up.
 3 MS. PRIVETERRE: What do these
 4 words that are qualifying as typical and
 5 common --
 6 MR. ZELMAN: Let me ask my
 7 questions. The federal rules are, if
 8 you have an objection, you could say
 9 objection to form and that is it.
 10 Q. Sir, is it typical or common in
 11 your professional duties to report to a
 12 certain location after you get a call from a
 13 supervisor?
 14 MS. PRIVETERRE: Do you know
 15 what he means when he uses the words
 16 "typical" or "common" or would you like
 17 him to rephrase the question?
 18 Q. Is it routine for you?
 19 A. Yes.
 20 Q. How many times have you
 21 testified in criminal cases?
 22 A. I don't know.
 23 Q. Was it more than 100?
 24 A. I don't know.
 25 Q. Was it more than 50?

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1 M. Visconti
 2 A. I don't know.
 3 Q. Was it more than ten?
 4 A. Yes.
 5 Q. Was it more than 20?
 6 A. I don't know.
 7 Q. Is there any way that you could
 8 find out?
 9 A. Probably.
 10 Q. How?
 11 A. If I went over every arrest I
 12 ever made to see how far it went in court.
 13 Q. Have you ever testified in front
 14 of the CCRB?
 15 A. Yes.
 16 Q. How many times?
 17 A. I am not sure.
 18 Q. Was it more than five?
 19 A. No.
 20 Q. More than two?
 21 A. Yes.
 22 Q. When was the last time you
 23 testified in front of the CCRB?
 24 A. I don't remember.
 25 MS. PRIVETERRE: We don't want

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1 M. Visconti
 2 you to guess.
 3 A. I don't remember.
 4 Q. Was it in 2008?
 5 A. I don't remember.
 6 Q. Was it last week?
 7 A. No.
 8 Q. Was it this month, May 2008?
 9 A. No.
 10 Q. Was it in April of 2008?
 11 A. No.
 12 Q. Can you approximate when you
 13 testified in front of the CCRB?
 14 MS. PRIVETERRE: You mean the
 15 last time?
 16 MR. ZELMAN: Yes, the most
 17 recent time.
 18 A. It has been several years.
 19 Q. That was the most recent time,
 20 several years ago?
 21 A. Yes.
 22 Q. Do you recall what the
 23 allegation was in that case?
 24 A. No.
 25 Q. Do you recall the outcome?

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1 M. Visconti
 2 A. No.
 3 Q. The other case where you
 4 testified in front of the CCRB, do you recall
 5 what year that was?
 6 A. No.
 7 Q. Do you recall what the
 8 allegation was?
 9 A. No.
 10 Q. Do you remember the outcome?
 11 A. No.
 12 Q. Were you ever disciplined from
 13 the time you began working at the NYPD?
 14 A. Yes.
 15 Q. When?
 16 A. In the police academy I was
 17 issued a CD for being late.
 18 Q. Any other time?
 19 A. And I was issued a CD some time
 20 after 2002.
 21 Q. Do you remember what it was for?
 22 A. Failure to notify a supervisor.
 23 Q. Were you docked vacation pay or
 24 did you receive any other discipline for those
 25 things?

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1 M. Visconti
 2 A. No.
 3 Q. Was there any other discipline
 4 action at the NYPD?
 5 A. No.
 6 Q. Have you ever been arrested?
 7 A. No.
 8 Q. Are you still full time with the
 9 NYPD?
 10 A. Yes.
 11 Q. Do you recall the arrest of Mr.
 12 Dikler?
 13 A. Somewhat.
 14 Q. What do you recall about it?
 15 A. I arrested him for being in
 16 possession of a duplicate type of NYPD
 17 detective shield.
 18 Q. Prior to the arrest, did you
 19 investigate, did you look at that shield, that
 20 badge?
 21 A. Rephrase the question.
 22 Q. Did you decide to place Mr.
 23 Dikler under arrest?
 24 A. Yes.
 25 Q. Before you decided to place Mr.

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1 M. Visconti
 2 Dicker under arrest, did you look at the
 3 badge?
 4 A. Yes.
 5 Q. What did the badge say, if you
 6 recall?
 7 A. I don't remember exactly.
 8 Q. Do you remember if it said he
 9 worked at the Transit Authority?
 10 MS. PRIVETERRE: You mean those
 11 exact words?
 12 Q. Or the MTA.
 13 A. Something to that effect, but I
 14 don't remember what it said.
 15 Q. To your knowledge, how many
 16 people were arrested at 26 Federal Plaza from
 17 2005 to 2008 with respect to badges?
 18 A. I don't know.
 19 Q. Do you know if it was more than
 20 100?
 21 A. I don't know.
 22 Q. Do you know why you received the
 23 assignment to go to 26 Federal Plaza on this
 24 particular date as opposed to someone else?
 25 A. Probably we were available.

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1 M. Visconti
 2 Q. Did you receive the call on
 3 March 22 to go to 26 Federal Plaza?
 4 A. Yes, it was on the same day.
 5 Q. It was on the same day?
 6 A. Yes.
 7 Q. Do you recall if that was the
 8 first time you ever performed an arrest for
 9 somebody in possession of allegedly a forged
 10 badge?
 11 A. I don't remember.
 12 Q. Do you remember placing anyone
 13 under arrest for a badge-related issue at any
 14 other time?
 15 MS. PRIVETERRE: Objection to
 16 the form.
 17 A. There were other people
 18 arrested, but I don't remember if it was for
 19 badge related or police impersonation.
 20 Q. Before you went to 26 Federal
 21 Plaza did you receive instructions about what
 22 you were to do when you got there?
 23 MS. PRIVETERRE: When?
 24 Q. On March 22 or any time before.
 25 A. Yes.

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1 M. Visconti
 2 Q. When did you receive those
 3 instructions?
 4 A. I don't remember.
 5 Q. Did you receive them in writing
 6 or did you receive them orally?
 7 A. Orally.
 8 Q. Who told you those instructions?
 9 A. The super. I don't know who
 10 specifically.
 11 Q. Do you recall if it was the date
 12 of the incident or some other date?
 13 A. Some other date.
 14 Q. Do you recall what the
 15 instructions were?
 16 A. Specifically, no.
 17 Q. In general.
 18 A. In general, basically, anyone
 19 who went into Federal Plaza with a forged
 20 shield of any type would be arrested.
 21 Q. How were you to determine
 22 whether or not it was forged?
 23 A. Training as a police officer
 24 and/or intelligence bulletins which described
 25 it specifically.

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1 M. Visconti
 2 Q. Did you receive any specific
 3 intelligence bulletins with respect to the
 4 Dikler shield?
 5 A. Would you rephrase the question?
 6 Q. Sure. You indicated that one
 7 way to figure out if the shield was forged was
 8 if you received an intelligence instruction;
 9 is that correct?
 10 MS. PRIVETERRE: Objection to
 11 the form.
 12 A. Are you referring to the
 13 intelligence bulletin?
 14 Q. Yes. What did the intelligence
 15 bulletin say, if you recall?
 16 MS. PRIVETERRE: Which one?
 17 MR. ZELMAN: Regarding a
 18 shield.
 19 A. It defined the specific shape of
 20 the shields that were allowed to be carried
 21 and by what persons.
 22 Q. So it listed permissible
 23 shields; is that correct?
 24 A. Yes.
 25 Q. Did it have pictures of shields

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1 M. Visconti
 2 that were not permissible?
 3 A. Specifically, no.
 4 Q. Unless the shield fell into one
 5 of these categories on the instructions, it
 6 was a forged badge?
 7 MS. PRIVETERRE: Objection to
 8 the form. Are you asking him a
 9 question?
 10 MR. ZELMAN: Yes, that is the
 11 question.
 12 MS. PRIVETERRE: May I have
 13 that read back?
 14 [The requested portion of the
 15 record was read.]
 16 MS. PRIVETERRE: Which
 17 categories, that is what I am not
 18 following?
 19 Q. You indicated that you received
 20 an instruction sheet listing the permissible
 21 badges; is that correct?
 22 A. Yes.
 23 Q. How many permissible badges were
 24 on the instruction sheet?
 25 A. That doesn't exactly describe

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1 M. Visconti
 2 it.
 3 Q. Can you describe the instruction
 4 sheet better?
 5 A. Sure. The shield possessed by
 6 law enforcement, specifically, for the city
 7 police department can be described and
 8 nothing can resemble them in terms of shape,
 9 which is the starburst. And there are a few
 10 people who are actually allowed to carry
 11 shields, such as registered law enforcement
 12 and security guards.
 13 Q. So is that what instruction the
 14 instruction sheet said?
 15 A. To some extent, yes.
 16 Q. Any time you see a starburst, if
 17 it wasn't an authorized NYPD holder, it was
 18 forged?
 19 MS. PRIVETERRE: Is that
 20 correct?
 21 THE WITNESS: No.
 22 MS. PRIVETERRE: Listen to the
 23 way he is characterizing it.
 24 THE WITNESS: No.
 25 Q. Can you categorize it?

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1 M. Visconti
 2 A. The court officers have shields
 3 like detectives. There are various types of
 4 shields, but it is limited as to who is
 5 allowed to possess a shield and if they are
 6 allowed to possess a shield. There are
 7 defined shapes as to what the shield looks
 8 like. For example, a security guard's
 9 shield, it should be in a specific shape.
 10 Q. How long was this instruction
 11 sheet? Was it one page?
 12 A. Yes.
 13 Q. Do you have a copy of it?
 14 A. Not with me, no.
 15 Q. Do you remember when you saw it?
 16 A. Not specifically.
 17 Q. Do you remember what year?
 18 A. 2006.
 19 Q. Is it safe to say that unless a
 20 person was authorized to wear a starburst-type
 21 of shield, for example, a court officer, a
 22 police officer, that any other persons wearing
 23 a starburst shield would be arrested for a
 24 forged shield?
 25 MS. PRIVETERRE: Objection to

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1 M. Visconti
 2 the form. Objection to the safe to
 3 say.
 4 But, otherwise, do you
 5 understand what he is asking?
 6 THE WITNESS: Yes.
 7 Q. Can you answer it?
 8 A. Yes.
 9 Q. And that is the situation we
 10 found ourselves in on March 22 when Mr. Dikler
 11 was arrested, he was not authorized to carry a
 12 starburst type of a shield; correct?
 13 A. Yes.
 14 Q. Prior to the arrest of Mr.
 15 Dikler, did you confirm that he worked at the
 16 Transit Authority or the MTA?
 17 A. Yes.
 18 Q. How did you do that?
 19 A. He had ID.
 20 Q. He had ID?
 21 A. Yes.
 22 Q. Did you ever call his employer
 23 on that date to verify his employment there?
 24 A. No.
 25 Q. Because you were confident that

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1 M. Visconti
 2 he did, in fact, work there?
 3 A. Yes.
 4 MS. PRIVETERRE: Objection to
 5 the form.
 6 Q. And that is because you felt the
 7 ID was valid?
 8 MS. PRIVETERRE: Which ID?
 9 MR. ZELMAN: The Transit
 10 Authority ID.
 11 MS. PRIVETERRE: Is that
 12 correct?
 13 THE WITNESS: Yes.
 14 Q. When you arrested Mr. Dikler,
 15 did you feel that he had any intent to deceive
 16 anybody about the fact that he worked at the
 17 Transit Authority?
 18 MS. PRIVETERRE: Objection to
 19 the form. He is not a mind reader.
 20 What are you asking?
 21 MR. ZELMAN: You could object to
 22 the form, but you can't ask questions.
 23 That is all you could do.
 24 MS. PRIVETERRE: If I can't
 25 understand it -- what are you asking?

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1 M. Visconti
 2 MR. ZELMAN: You could object to
 3 the form.
 4 MS. PRIVETERRE: May I have that
 5 read back, please.
 6 [The requested portion of the
 7 record was read.]
 8 A. The question -- there is no way
 9 for me to know that.
 10 Q. When you arrested Mr. Dikler,
 11 did you feel that he was trying to trick
 12 anybody?
 13 MS. PRIVETERRE: When?
 14 MR. ZELMAN: At any time.
 15 MS. PRIVETERRE: At any time
 16 that day?
 17 MR. ZELMAN: Yes.
 18 Q. Prior to your arrest.
 19 A. When you say trick I don't
 20 understand.
 21 Q. In any respect, do you know if
 22 he tried to use the shield to get into the
 23 building?
 24 A. No.
 25 MS. PRIVETERRE: Is that a no,

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1 M. Visconti
 2 you don't know?
 3 A. No, I don't know.
 4 Q. You never found out if he ever
 5 tried to use the shield to get into the
 6 building?
 7 A. No.
 8 Q. Did anybody tell you that shield
 9 was forged at 26 Federal Plaza, did anybody
 10 that day tell you that this shield was forged?
 11 A. No.
 12 Q. It was your decision?
 13 A. Well, the question -- my
 14 decision, you mean based on what?
 15 Q. Based upon your investigation
 16 that the shield was forged.
 17 A. Yes.
 18 Q. Did anyone participate in that
 19 decision and tell you, I think it is forged,
 20 or I don't think it is forged?
 21 MS. PRIVETERRE: Objection to
 22 the form.
 23 A. I don't understand question.
 24 Q. Did you speak to any other
 25 officer or any other secretary on March 22,

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1 M. Visconti
2 about whether or not the shield was forged?
3 MS. PRIVETERRE: When?
4 MR. ZELMAN: On March 22.
5 MS. PRIVETERRE: The whole day?
6 MR. ZELMAN: The whole day.
7 MS. PRIVETERRE: The whole day
8 before the arrest?
9 MR. ZELMAN: The whole day.
10 A. Yes.
11 Q. Who did you speak to?
12 A. I don't remember. There were
13 several people there.
14 Q. When you say there, do you mean
15 at 26 Federal Plaza?
16 A. Yes.
17 Q. Do you remember if you spoke to
18 the NYPD or to someone else?
19 A. My partner was with me.
20 Q. Who is your partner?
21 A. I don't know who my partner was
22 on that day, I am not sure.
23 Q. What did he or she say to you?
24 A. I don't remember.
25 Q. Did it influence you about

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1 M. Visconti
2 whether or not to perform this arrest?
3 A. No.
4 Q. More so than anything else, you
5 did this arrest because the instruction sheet
6 did not allow Mr. Dikler to carry this
7 particular shield?
8 MS. PRIVETERRE: Please read
9 back the question.
10 [The requested portion of the
11 record was read.]
12 MS. PRIVETERRE: Objection to
13 the form.
14 MR. ZELMAN: That is all you
15 could say.
16 MS. PRIVETERRE: More or less,
17 do you understand what the question is
18 asking or purports to ask?
19 THE WITNESS: Yes, but it is
20 kind of general.
21 Q. Other than instructions you got
22 from the instruction sheet, was there any
23 other factor which you used to make a
24 determination to do the arrest with Mr.
25 Dikler?

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1 M. Visconti
2 A. Yes.
3 Q. What was that?
4 A. Bus drivers do not have shields.
5 Q. Where did you learn that
6 information from?
7 A. I had spoken to someone at the
8 MTA.
9 Q. So you personally knew that bus
10 drivers were not supposed to have shields?
11 A. Yes.
12 Q. Do you remember the person who
13 told you that?
14 A. No.
15 Q. Before you arrested Mr. Dikler,
16 did you ask him where he got this shield?
17 A. Me specifically, no.
18 Q. Did you find out where he got
19 the shield before you made the arrest?
20 A. Yes.
21 Q. And how did you find that out?
22 A. He had made statements to others
23 indicating that he purchased it from someone.
24 Q. Did you find out what he had
25 said?

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1 M. Visconti
2 A. Specifically, what I had just
3 stated.
4 Q. Which was what?
5 A. He purchased it from someone
6 else.
7 Q. Did you find out where he had
8 purchased it?
9 A. No.
10 Q. Do you know if he purchased it
11 on MTA property or not?
12 A. I don't know.
13 Q. Is it true, the fact that Mr.
14 Dikler worked at the Transit Authority had no
15 bearing on whether or not he was going to be
16 arrested on that day?
17 MS. PRIVETERRE: Objection to
18 the form.
19 You could answer if you
20 understand the question.
21 A. I don't really understand it.
22 Q. The fact that he worked at the
23 MTA or at the Transit Authority was irrelevant
24 to this arrest; is that correct?
25 MS. PRIVETERRE: Objection to

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1 M. Visconti
 2 the form.
 3 A. How do you mean that?
 4 Q. When you made the arrest, it was
 5 not your claim that he was not working at the
 6 Transit Authority and trying to trick people
 7 into believing that he was working at the
 8 Transit Authority; is that correct?
 9 MR. SILVERMAN: Objection to
 10 the form.
 11 MS. PRIVETERRE: Objection to
 12 the form.
 13 Could you rephrase that, please,
 14 Mr. Zelman?
 15 MR. ZELMAN: I will withdraw
 16 the question.
 17 Q. Do you know if every badge that
 18 went through 26 Federal Plaza was
 19 investigated?
 20 MS. PRIVETERRE: At what time
 21 frame?
 22 MR. ZELMAN: At any time.
 23 MS. PRIVETERRE: The time frame
 24 that he had been called there?
 25 MR. ZELMAN: Let's say in 2006.

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1 M. Visconti
 2 Q. Were you aware of a policy in
 3 Federal Plaza that all badges had to be
 4 investigated?
 5 A. Yes.
 6 Q. When did you become aware of
 7 that?
 8 A. I don't remember.
 9 Q. What did you become aware of?
 10 A. They would notify us if someone
 11 was found to be in possession of a shield.
 12 Q. When you say they, who are you
 13 referring to?
 14 A. 26 Federal Plaza.
 15 Q. Who at 26 Federal Plaza would
 16 tell you that?
 17 A. Federal Protective Service.
 18 Q. Was the Federal Protective
 19 Service called up in the NYPD or would they
 20 call up internal affairs?
 21 A. Yes.
 22 Q. Would they tell internal affairs
 23 we have here a fake badge or we have a badge
 24 that we want you to look into or something
 25 else?

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1 M. Visconti
 2 MS. PRIVETERRE: Objection to
 3 the form.
 4 A. Specifically?
 5 Q. Yes.
 6 A. You would have to rephrase the
 7 question.
 8 Q. When the Federal Protective
 9 Service was called, were they telling you they
 10 wanted to do an arrest or that the NYPD should
 11 investigate whether or not to do an arrest?
 12 MS. PRIVETERRE: Do you
 13 understand what is being asked?
 14 A. If you could rephrase the
 15 question, I'm sorry.
 16 Q. When the Federal Protective
 17 Service was called --
 18 A. Yes.
 19 Q. -- what would they say?
 20 A. In general, there is someone
 21 here with a forged shield.
 22 Q. They would say it is forged?
 23 A. Yes.
 24 Q. Do you know how they made a
 25 determination it was forged?

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1 M. Visconti
 2 MS. PRIVETERRE: Again, we are
 3 talking about generally and not about
 4 the Dikler arrest?
 5 MR. ZELMAN: Right.
 6 MR. SILVERMAN: Objection to
 7 the form.
 8 Q. Generally speaking.
 9 A. They were trained.
 10 Q. You didn't speak to the Federal
 11 Protective Services over the phone while you
 12 were at internal affairs; is that correct?
 13 MS. PRIVETERRE: Objection to
 14 the form.
 15 A. On what date?
 16 Q. March 22.
 17 A. I don't think I spoke to them.
 18 Q. When you arrived at 26 Federal
 19 Plaza, did you speak to someone at the federal
 20 agency?
 21 A. Yes.
 22 Q. Who?
 23 A. I don't remember.
 24 Q. What did that person tell you?
 25 A. Mr. Dikler had gone through a

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1 M. Visconti
 2 metal detector at the entrance and it was in
 3 the pocket of a jacket, the shield that he had
 4 in his possession.
 5 Q. Did the Federal Protective
 6 Service tell you it was a forged shield?
 7 A. Yes.
 8 Q. Did you ask them why they
 9 thought it was forged?
 10 MR. SILVERMAN: Objection to
 11 the form.
 12 MS. PRIVETERRE: I join.
 13 Do you understand the question?
 14 A. If you could rephrase it.
 15 Q. Did you ask him why he thought
 16 that the shield was forged?
 17 MS. PRIVETERRE: Are you
 18 talking about the Federal Protective
 19 Service agency?
 20 MR. ZELMAN: Yes.
 21 MS. PRIVETERRE: Agency?
 22 MR. ZELMAN: Yes.
 23 A. I don't remember.
 24 Q. When you got to the scene it was
 25 your determination to make about whether or

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1 M. Visconti
 2 not it was forged?
 3 A. Yes.
 4 MS. PRIVETERRE: Objection to
 5 the form.
 6 Q. Can you describe the procedure
 7 that you went through after you got through 26
 8 Federal Plaza investigating this particular
 9 badge?
 10 A. Yes.
 11 Q. Go ahead.
 12 A. Mr. Dikler was placed in
 13 handcuffs, he was removed to the 5th Precinct
 14 where pedigree information was taken, and an
 15 online booking sheet was prepared. There was
 16 a complaint report prepared, he was
 17 fingerprinted and taken to Manhattan Central
 18 Booking. I spoke with the Manhattan DA --
 19 Q. What I was really referring to
 20 was prior to the arrest, can you describe
 21 anything that you did or investigated about
 22 this badge before you made the decision to
 23 place Mr. Dikler under arrest?
 24 A. I don't understand the question.
 25 Q. When you got to 26 Federal

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1 M. Visconti
 2 Plaza, did you just put him in handcuffs?
 3 A. No.
 4 Q. Did you investigate the badge?
 5 Did you look at the badge?
 6 A. Yes.
 7 Q. What else did you do besides
 8 look at it?
 9 A. I don't know what you mean, what
 10 else?
 11 Q. You don't know what I mean?
 12 A. No. Are you --
 13 MS. PRIVETERRE: No, no, no,
 14 you already told him you don't
 15 understand what he means. Let him
 16 rephrase it.
 17 Q. When you got to 26 Federal
 18 Plaza, before you placed Mr. Dicker under
 19 arrest, did you investigate the badge to
 20 determine whether or not it was forged or not?
 21 A. Yes.
 22 Q. How?
 23 A. Simply by looking at it.
 24 Q. Anything else?
 25 A. No.

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1 M. Visconti
 2 Q. And you could tell by looking at
 3 it that it was a forged badge?
 4 A. Yes.
 5 Q. Why is that?
 6 A. The specific shape of the badge
 7 and what it said on the face of it.
 8 Q. When did it say on the face of
 9 it?
 10 A. Again, I don't recall
 11 specifically. It was something about the
 12 Transit Authority.
 13 Q. Do you recall if that was the
 14 first arrest that you made with respect to a
 15 Transit Authority badge?
 16 A. I am not sure.
 17 Q. It is possible that there were
 18 prior arrests?
 19 MS. PRIVETERRE: Objection.
 20 A. I am not sure.
 21 Q. How about after this arrest, did
 22 you arrest any other Transit Authority
 23 employees for carrying a badge?
 24 A. No, I don't believe so.
 25 Q. Do you recall how you became in

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1 M. Visconti
 2 possession of the badge? Did someone hand it
 3 to you?
 4 A. I don't remember.
 5 Q. Do you remember if you saw it on
 6 a desk?
 7 A. I don't remember.
 8 Q. Did you ever speak to Mr. Dikler
 9 about the badge?
 10 A. Yes.
 11 Q. What did you ask him?
 12 A. I don't remember.
 13 Q. Do you remember what he
 14 responded?
 15 A. I don't remember.
 16 Q. Do you have any memo book notes
 17 that would assist you in determining that?
 18 A. No.
 19 Q. Any other documentation that
 20 would assist you in determining what Mr.
 21 Dikler told you?
 22 A. No.
 23 Q. Do you recall if he told you
 24 that he worked at the MTA?
 25 A. Yes.

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1 M. Visconti
 2 Q. Do you recall anything else that
 3 he said?
 4 A. No.
 5 Q. You accompanied Mr. Dikler back
 6 to the precinct?
 7 A. Yes.
 8 Q. Did he have to make a phone
 9 call?
 10 A. I don't remember.
 11 Q. Do you recall telling Mr. Dikler
 12 that it is better for him to call in sick
 13 rather than to say he was arrested?
 14 A. No.
 15 Q. Do you deny that you said that?
 16 A. Yes.
 17 Q. Did you speak to Special Agent
 18 Thomas Mahoney about this arrest?
 19 A. I don't remember.
 20 Q. Is there anything that you could
 21 review that would assist you in determining
 22 whether you spoke to him or not?
 23 A. My notes, maybe.
 24 Q. Where are your notes?
 25 A. I don't know.

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1 M. Visconti
 2 Q. Are you talking about your memo
 3 book?
 4 A. No.
 5 Q. What type of notes are you
 6 talking about?
 7 A. Arrest paperwork.
 8 Q. In other words it's what you
 9 would enter on the computer?
 10 MS. PRIVETERRE: Is that a
 11 question?
 12 MR. ZELMAN: Yes.
 13 Q. I am asking you what type of
 14 notes were these? Were these handwritten
 15 notes?
 16 A. Yes.
 17 Q. What do you do with the
 18 handwritten notes after the arrest?
 19 A. It stays with the folder.
 20 Q. So it is in the folder at the
 21 internal affairs bureau?
 22 A. Yes.
 23 Q. Did you look at that in
 24 preparation for today's deposition?
 25 A. Yes.

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1 M. Visconti
 2 Q. But you did not bring it with
 3 you?
 4 A. No.
 5 Q. What is contained in the
 6 internal affairs folder?
 7 A. You have to rephrase that
 8 question.
 9 Q. You have an internal affairs
 10 folder on Mr. Dikler; is that correct?
 11 A. Internal affairs folder is not
 12 really the right term, it is a broad term.
 13 Q. How would you define it?
 14 A. There are all different types of
 15 folders.
 16 Q. The folders that you looked at
 17 today or yesterday refer to Mr. Dikler; is
 18 that correct?
 19 A. Yes.
 20 Q. What type of folder is that?
 21 A. In this particular case it is an
 22 online booking, so there are some notes and an
 23 affidavit.
 24 Q. An affidavit?
 25 A. Yes.

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1 M. Visconti
 2 Q. What is the name of that folder?
 3 Does the folder have a name?
 4 A. No.
 5 Q. Does it say "Mr. Dikler" on it?
 6 A. I have my own folder.
 7 Q. So this is your own personal
 8 document at internal affairs?
 9 A. Yes.
 10 Q. Whose affidavit is this in that
 11 folder?
 12 A. I don't understand.
 13 Q. You said you looked at an
 14 affidavit in the folder; is that right?
 15 A. Yes.
 16 Q. Who signed the affidavit?
 17 A. I did.
 18 Q. What did the affidavit state?
 19 A. I don't remember specifically.
 20 Q. In general, what was it about?
 21 A. It was in reference to the
 22 shield.
 23 Q. What did it say about the
 24 shield?
 25 A. It was a forged shield.

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1 M. Visconti
 2 Q. Is there anything else in the
 3 affidavit besides it was a forged shield?
 4 A. Who I spoke to and his name.
 5 Q. Mr. Dikler's name?
 6 A. Yes, in general, things of that
 7 nature.
 8 Q. How many pages is the affidavit?
 9 A. I think it is less than a page.
 10 Q. When you say who you spoke to,
 11 do you mean who you spoke to in regard to the
 12 arrest?
 13 A. Yes.
 14 Q. What was contained in your notes
 15 in that folder?
 16 A. An online booking sheet,
 17 affidavit, the handwritten notes, the
 18 paperwork from the Federal Protective Service
 19 in regard to the shield. A central booking
 20 photo. I think that is probably about it.
 21 Maybe a few other -- that is about it.
 22 Q. You have that information held
 23 at the internal affairs office?
 24 A. No.
 25 Q. I'm sorry, you have that

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1 M. Visconti
 2 paperwork at the internal affairs office?
 3 A. Yes.
 4 Q. You indicated that there is
 5 something from the Federal Protective agency;
 6 is that it?
 7 MS. PRIVETERRE: Objection to
 8 the form.
 9 Q. What is the name of the federal
 10 agency?
 11 A. I am not certain. I believe it
 12 is Federal Protective Service.
 13 Q. You indicated just now there is
 14 a document in the folder from the Federal
 15 Protective Service.
 16 Was that a document referring to
 17 Mr. Dikler himself or just generally about
 18 shields and badges?
 19 A. You have to rephrase that
 20 question.
 21 Q. Did that document that you just
 22 referred to from the Federal Protective
 23 Service relate to Mr. Dikler specifically?
 24 Did it list his name?
 25 A. Yes, in regard to this incident.

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1 M. Visconti
 2 Q. So it was a document prepared
 3 specifically about Mr. Dikler's shield and
 4 arrest?
 5 A. Yes.
 6 MS. PRIVETERRE: Why don't you
 7 show him the initial disclosure.
 8 MR. ZELMAN: Relax. You could
 9 show him before the deposition is
 10 finished whatever you want.
 11 MS. PRIVETERRE: Are you going
 12 to mark it as an exhibit?
 13 MR. ZELMAN: Yes.
 14 Q. Did you speak to Police Officer
 15 Frank Torres about this arrest?
 16 A. I don't know.
 17 Q. Do you know if he was involved
 18 in the arrest in any manner?
 19 A. No.
 20 Q. Sergeant Robert Allay, did you
 21 speak to him about the arrest in any way?
 22 A. I don't know.
 23 Q. Do you know if he was involved
 24 in the arrest?
 25 Q. Detective Gregory McCain, the

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1 M. Visconti
 2 same question, did you speak to him about this
 3 arrest?
 4 A. He would have probably been my
 5 partner.
 6 Q. Do you recall speaking to him
 7 about the arrest?
 8 A. I don't understand the question.
 9 Q. Do you recall speaking to him
 10 about this arrest at any time?
 11 A. Yes.
 12 Q. When?
 13 A. I guess on the date of the
 14 arrest.
 15 Q. At any other time did you speak
 16 to him or was it only on that date?
 17 A. I don't understand the question.
 18 Q. At any other time did you speak
 19 to Detective Gregory McCain about Mr. Dikler's
 20 arrest other than on March 22, 2006?
 21 A. Yes.
 22 Q. When?
 23 A. Everybody in my office probably
 24 knew I was getting sued.
 25 Q. I guess my question is this, on

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1 M. Visconti
 2 March 22, 2006, what did you speak to him
 3 about?
 4 A. I don't remember.
 5 MS. PRIVETERRE: That is a
 6 different question now.
 7 Q. You don't recall anything he
 8 said about this?
 9 A. No, I don't recall.
 10 Q. Do you know if Detective Gregory
 11 McCain was involved in the arrest in any way
 12 other than the fact you spoke to him about it?
 13 Did he prepare any paperwork on it, if you
 14 know?
 15 A. If he was my partner he might
 16 have done some of the paperwork for me, and
 17 entered it into the computer.
 18 Q. Do you know if he did that?
 19 A. Probably, but I am not sure.
 20 Q. Detective Mark DaTorro, does
 21 that name sound familiar to you?
 22 A. He is a sergeant.
 23 Q. Did you speak to him on March
 24 22, at any time about this arrest?
 25 A. No.

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1 M. Visconti
 2 Q. At any time did you speak to him
 3 about the arrest?
 4 A. No.
 5 Q. Lieutenant Robert Stapleton, did
 6 you speak to him at all about this arrest?
 7 A. I am not even sure who that is.
 8 Q. Did you ever learn what became
 9 of Mr. Dikler's prosecution?
 10 A. Yes.
 11 Q. What?
 12 A. It was sealed. Apparently, the
 13 arrest was thrown out of court.
 14 Q. When did you first learn that
 15 information?
 16 A. When I found out I was being
 17 sued.
 18 Q. You indicated earlier that you
 19 spoke to the DA about the case on March 22.
 20 A. Yes.
 21 Q. Was that the last time you spoke
 22 to the DA about the case?
 23 A. Yes.
 24 Q. Were you ever called to testify
 25 in court?

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1 M. Visconti
 2 A. I don't remember.
 3 Q. Did the DA tell you anything
 4 about the case?
 5 A. Not that I remember.
 6 Q. The DA had you sign a criminal
 7 court complaint?
 8 A. Yes.
 9 Q. Did you review that before you
 10 signed it?
 11 A. Yes.
 12 Q. Mr. Dikler, do you recall if he
 13 came with anyone to 26 Federal Plaza?
 14 MS. PRIVETERRE: Do you know
 15 that?
 16 A. I was told that he did, yes.
 17 Q. Do you recall if he was allowed
 18 to go to his appointment before his arrest?
 19 MR. SILVERMAN: Note my
 20 objection to the form.
 21 A. I don't remember.
 22 Q. Do you know if it was the policy
 23 of 26 Federal Plaza to confiscate the badge,
 24 but allow the person to go to their
 25 immigration appointment and then come back to

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1 M. Visconti
 2 the office?
 3 MS. PRIVETERRE: Objection to
 4 the form. Are you aware of what the
 5 policy of 26 Federal Plaza is?
 6 THE WITNESS: Specifically, no.
 7 MR. ZELMAN: Counsel, you
 8 cannot suggest an answer, you could only
 9 object.
 10 Q. Are you aware if Mr. Dikler was
 11 allowed to go to his appointment on March 22,
 12 2006?
 13 MR. SILVERMAN: Note my
 14 objection to the form.
 15 A. I don't remember.
 16 Q. How long after Mr. Dikler
 17 arrived at 26 Federal Plaza and his badge was
 18 confiscated, did you arrive at 26 Federal
 19 Plaza?
 20 MS. PRIVETERRE: Do you know?
 21 A. I think it was a few hours.
 22 Q. A few hours?
 23 A. Yes.
 24 Q. Where is your office in internal
 25 affairs?

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1 M. Visconti
 2 A. Long Island City.
 3 Q. Long Island City?
 4 A. Yes.
 5 Q. So you had to go from Long
 6 Island City to 26 Federal Plaza?
 7 A. I don't think I was in my office
 8 at the time.
 9 Q. Do you recall where you were
 10 when you received this call?
 11 A. No.
 12 Q. Do you recall how long it took
 13 you to get to 26 Federal Plaza?
 14 A. No.
 15 Q. Do you know if it was more than
 16 an hour?
 17 A. Not for certain, no.
 18 Q. Was it your understanding that
 19 Mr. Dikler could go out of the building while
 20 he was waiting for you to arrive at 26 Federal
 21 Plaza, or was it your understanding that he
 22 was already in custody?
 23 A. Generally, when they call us
 24 they are already in the building. I don't
 25 know if he was really in custody.

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1 M. Visconti
 2 MS. PRIVETERRE: He is asking
 3 you, specifically.
 4 MR. ZELMAN: You cannot stop him
 5 from answering a question.
 6 If this happens one more time, I
 7 am calling the judge. You cannot jump
 8 in and give him your two cents.
 9 MS. PRIVETERRE: Yes or no? Do
 10 you understand the question?
 11 [The requested portion of the
 12 record was read.]
 13 MR. ZELMAN: This is the last
 14 time, counsel. I am warning you, I
 15 will pick up the phone and I will call.
 16 MS. PRIVETERRE: We have been
 17 through that before.
 18 MR. ZELMAN: He is answering
 19 the question and you cannot interrupt
 20 me.
 21 MS. PRIVETERRE: Do what you
 22 will.
 23 MR. ZELMAN: Please read back
 24 the question and answer.
 25 [The requested portion of the

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1 M. Visconti
 2 record was read.]
 3 MS. PRIVETERRE: Read back the
 4 last question and answer again for me,
 5 please.
 6 [The requested portion of the
 7 record was read.]
 8 (Brief recess.)
 9 Q. Prior to the arrest of Mr.
 10 Dikler, did you check his arrest record?
 11 A. No.
 12 Q. Do you know if he had ever been
 13 arrested before?
 14 A. I am not sure.
 15 Q. Were there any phone calls
 16 between you and the DA at any time?
 17 A. Yes.
 18 Q. How many?
 19 A. I don't remember.
 20 Q. Phone calls regarding Mr.
 21 Dikler?
 22 A. Yes.
 23 Q. Do you recall the nature of
 24 those phone conversations?
 25 A. With regard to the arrest?

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1 M. Visconti
 2 Q. Specifically.
 3 A. Details of the arrest.
 4 Q. Do you remember any specific
 5 questions that the DA asked?
 6 A. No.
 7 Q. Do you remember any answers that
 8 you gave?
 9 A. Specifically, no.
 10 Q. In general.
 11 A. No.
 12 Q. Did you call the DA or did the
 13 DA call you or both?
 14 A. Both.
 15 Q. Was this all on March 22?
 16 A. I am not sure.
 17 Q. It is possible that you spoke to
 18 the DA after March 22, regarding Mr. Dikler?
 19 A. Yes.
 20 Q. Do you think that you did?
 21 MS. PRIVETERRE: Objection.
 22 A. You have to rephrase the
 23 question.
 24 Q. Do you believe that you did?
 25 A. Rephrase the question again in

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1 M. Visconti
 2 regard to that.
 3 Q. Do you believe that you spoke to
 4 the DA with regard to Mr. Dikler after March
 5 22, 2006?
 6 A. No.
 7 Q. You believe it happened all on
 8 March 22?
 9 A. Yes.
 10 Q. If you had known that Mr. Dikler
 11 had purchased his badge on MTA property, would
 12 that have changed your decision about whether
 13 to effectuate an arrest?
 14 A. No.
 15 Q. Did you ever inquire of the MTA
 16 if it allowed its workers to purchase badges
 17 on its premises?
 18 MS. PRIVETERRE: When?
 19 A. Rephrase the question.
 20 MR. ZELMAN: Please read it
 21 back.
 22 [The requested portion of the
 23 record was read.]
 24 A. Yes.
 25 Q. When --

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1 M. Visconti
 2 A. I don't remember.
 3 Q. -- before or after the March 22,
 4 2006 arrest?
 5 A. I am not sure.
 6 Q. Did you inquire in writing? Did
 7 you inquire orally?
 8 A. Orally.
 9 Q. You don't recall who you spoke
 10 to?
 11 MS. PRIVETERRE: Objection.
 12 A. No.
 13 Q. Do you recall who you called?
 14 A. The MTA.
 15 Q. Do you remember what the
 16 response was that you got?
 17 A. Yes.
 18 Q. What was it?
 19 A. They are not allowed to have
 20 shields.
 21 Q. But you do not know who said
 22 that?
 23 A. No.
 24 Q. And it was not in writing?
 25 A. No.

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1 M. Visconti
 2 Q. Before you arrested Mr. Dikler,
 3 had you ever seen a TA employee with a shield?
 4 A. I don't remember.
 5 Q. You don't remember?
 6 A. No.
 7 MS. PRIVETERRE: In his
 8 capacity --
 9 MR. ZELMAN: I am asking him
 10 the questions.
 11 MS. PRIVETERRE: -- as an
 12 officer?
 13 MR. ZELMAN: Counsel, you can't
 14 ask questions. You could object.
 15 That is all you could do.
 16 MS. PRIVETERRE: Did I object
 17 to that question about had he ever seen
 18 an MTA shield?
 19 Now I want to object to the
 20 question.
 21 Q. Did you believe that Mr. Dikler
 22 felt his badge was forged?
 23 MS. PRIVETERRE: Objection to
 24 the form.
 25 A. I wouldn't know that.

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1 M. Visconti
 2 Q. You didn't develop an opinion on
 3 that matter?
 4 MS. PRIVETERRE: Objection.
 5 A. No.
 6 Q. Did he deny that it was a forged
 7 badge?
 8 A. I don't remember
 9 Q. After you arrested Mr. Dikler,
 10 did you ever advise him about what would
 11 likely happen to his case?
 12 MS. PRIVETERRE: Objection.
 13 A. I don't remember.
 14 Q. Did you ever say that the
 15 forgery charge is likely to get dismissed?
 16 A. I don't remember.
 17 Q. Before you arrested Mr. Dikler,
 18 did you have any knowledge about what the
 19 court would likely do with this case?
 20 MS. PRIVETERRE: Objection.
 21 A. No.
 22 Q. When you made the arrest of Mr.
 23 Dikler, it was not your contention that the
 24 information contained within the badge was in
 25 any way inaccurate; is that correct?

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1 M. Visconti
 2 MS. PRIVETERRE: Objection.
 3 May I have that read back?
 4 [The requested portion of the
 5 record was read.]
 6 MS. PRIVETERRE: Do you
 7 understand that question?
 8 THE WITNESS: No, I did not.
 9 Q. Was it your belief that the
 10 information contained within the badge was in
 11 any way inaccurate?
 12 MR. SILVERMAN: Objection to
 13 the form.
 14 A. I don't understand the question.
 15 Q. Do you recall the information
 16 that the badge had on it?
 17 A. Not specifically.
 18 Q. Do you recall that it had Mr.
 19 Dikler's name?
 20 MS. PRIVETERRE: Objection.
 21 A. I don't remember.
 22 Q. Do you remember any information
 23 that was on the badge?
 24 A. Specifically, no.
 25 Q. Do you remember what those types

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1 M. Visconti
 2 of badges would typically say?
 3 MS. PRIVETERRE: Objection.
 4 Objection to the word "typical."
 5 A. There is no --
 6 Q. No typical badge?
 7 A. No.
 8 Q. In possessing the type of badge
 9 that Mr. Dikler had, did you form an opinion
 10 as to whether or not he had an intent to
 11 deceive with it?
 12 MS. PRIVETERRE: Objection.
 13 A. No.
 14 Q. You did not form an opinion?
 15 A. No.
 16 Q. Do you have an opinion today
 17 about that?
 18 A. No.
 19 Q. Do you suspect that he was
 20 trying to deceive somebody with it or not?
 21 MS. PRIVETERRE: Objection.
 22 Asked and answered.
 23 MR. SILVERMAN: Objection to
 24 the form.
 25 A. I don't know.

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1 M. Visconti
 2 Q. Who made the decision about the
 3 arrest charges? Was it your decision or was
 4 it someone else's?
 5 A. Mine.
 6 Q. Do you recall what the arrest
 7 charges were?
 8 A. It was for the possession of a
 9 forged instrument.
 10 Q. Do you recall anything else?
 11 A. I am not sure.
 12 Q. Was there also one charge for
 13 the unauthorized use of detective
 14 identification, General Business Law Section
 15 80.
 16 A. I am not sure. That might have
 17 been one.
 18 Q. That might have been one?
 19 A. I am not sure.
 20 MS. PRIVETERRE: Are we going
 21 to mark it as an exhibit, counselor?
 22 MR. ZELMAN: No, I am not.
 23 MS. PRIVETERRE: You are
 24 referring to something.
 25 MR. ZELMAN: I could look at

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1 M. Visconti
 2 anything I want.
 3 MS. PRIVETERRE: The witness
 4 does not have the benefit of seeing
 5 that.
 6 MR. ZELMAN: You could show him
 7 whatever you want. I am not here to
 8 prepare your witness.
 9 MS. PRIVETERRE: You are
 10 referring to a document --
 11 MR. ZELMAN: Counsel, please.
 12 Q. Was it your opinion that Mr.
 13 Dikler had violated General Business Law
 14 Section 80?
 15 A. I am not sure.
 16 Q. Do you recall what the General
 17 Business Law Section 80 is?
 18 A. No.
 19 Q. How would you make a
 20 determination about what the arrest charges
 21 were?
 22 A. Based on the incident.
 23 Q. And how would you determine
 24 which arrest charges to apply to the incident?
 25 A. Would you please rephrase the

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1 M. Visconti
 2 question.
 3 Q. You were the one who decided
 4 which arrest charges to apply to Mr. Dikler;
 5 is that correct?
 6 MS. PRIVETERRE: Objection.
 7 A. Yes.
 8 Q. How did you determine those
 9 arrest charges versus other arrest charges?
 10 For example, the possession of a forged
 11 instrument in the second degree?
 12 MS. PRIVETERRE: Objecting.
 13 Q. That was an arrest charge; is
 14 that correct.
 15 MS. PRIVETERRE: Objection.
 16 A. Repeat that.
 17 Q. Was the possession of a forged
 18 instrument in the second degree the arrest
 19 charge?
 20 A. I think so, yes.
 21 Q. How did you determine that
 22 particular charge as opposed to first degree,
 23 the third degree or some other violation of
 24 the statute?
 25 A. Based on the intelligence

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1 M. Visconti
 2 bulletin that I had explained about earlier.
 3 Q. That is the same instruction
 4 sheet that you had from the Federal Protective
 5 Service or a different intelligent bulletin?
 6 MR. SILVERMAN: Note my
 7 objection to the form.
 8 MS. PRIVETERRE: I join.
 9 Q. What intelligent bulletin are
 10 you referring to?
 11 A. The one issued by the New York
 12 Police Department.
 13 Q. Do you recall how many pages
 14 that was?
 15 MS. PRIVETERRE: Asked and
 16 answered. Objection.
 17 A. One.
 18 Q. It was one page?
 19 A. Yes.
 20 Q. The way you extrapolated which
 21 charge to charge Mr. Dikler, were those
 22 charges listed on the form itself?
 23 MS. PRIVETERRE: Objection.
 24 A. What?
 25 Q. Before you charged Mr. Dikler

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1 M. Visconti
 2 with an arrest charge, would you have read the
 3 law on it?
 4 A. Explain it better.
 5 Q. One of the arrest charges was
 6 the possession of a forged instrument in the
 7 second degree; is that correct?
 8 A. Yes.
 9 Q. You indicated that you would use
 10 the instruction sheet to make the
 11 determination that was the arrest charge to
 12 apply to Mr. Dikler --
 13 MS. PRIVETERRE: Objection.
 14 Q. -- is that correct?
 15 A. To some extent, yes.
 16 Q. Would you also then read that
 17 particular statute, the possession of a forged
 18 instrument, on your own? Would you read that
 19 item as to whether it applied to this
 20 particular event?
 21 A. Not necessarily.
 22 Q. Do you recall if you did that in
 23 this case?
 24 A. No.
 25 Q. How about generally?

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1 M. Visconti
 2 MS. PRIVETERRE: No, you don't
 3 recall or no, you didn't?
 4 A. No, I don't recall.
 5 MS. PRIVETERRE: Then you
 6 should say so.
 7 Q. With regard to General Business
 8 Law Section 80, do you recall whether you read
 9 that before you determined it was an arrest
 10 charge?
 11 A. No.
 12 Q. So, typically, the way that you
 13 determine an arrest charge is to read an NYPD
 14 memo or instruction sheet?
 15 MS. PRIVETERRE: Objection to
 16 the form.
 17 A. No.
 18 Q. How do you typically determine
 19 what the arrest charges are?
 20 A. It depends on the incident.
 21 Q. How do you determine what the
 22 charges are?
 23 A. It depends on the incident.
 24 MS. PRIVETERRE: Asked and
 25 answered.

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1 M. Visconti
 2 Q. In this particular case one of
 3 the arrest charges was possession of a forged
 4 instrument in the second degree.
 5 A. Yes.
 6 Q. My question is, how did you make
 7 a determination that it was possession of a
 8 forged instrument in the second degree and not
 9 possession of a forged instrument in the third
 10 degree?
 11 MS. PRIVETERRE: Objection.
 12 A. I don't understand what it is
 13 you are asking?
 14 Q. You don't understand that
 15 question?
 16 A. No.
 17 Q. What don't you understand about
 18 it?
 19 MS. PRIVETERRE: That is
 20 badgering. I think he is asking you to
 21 rephrase the question.
 22 MR. ZELMAN: I rephrased it four
 23 times. I don't know what he doesn't
 24 understand about it.
 25 MS. PRIVETERRE: Don't badger

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1 M. Visconti
 2 the witness.
 3 MR. ZELMAN: I am not badgering
 4 him.
 5 MS. PRIVETERRE: You are being
 6 argumentative.
 7 MR. ZELMAN: No, I am not.
 8 If you want to talk, this is not the
 9 time. You are allowed to object. I
 10 said it four times.
 11 MS. PRIVETERRE: I won't allow
 12 you to badger the witness.
 13 MR. ZELMAN: Let's call the
 14 court. I am sick of this. If you
 15 want to call the court, then let's do
 16 it.
 17 MS. PRIVETERRE: You are
 18 badgering him. He is asking you for a
 19 clarification. You keep saying, what
 20 doesn't he understand.
 21 MR. ZELMAN: You can't speak
 22 during a deposition, doesn't that sink
 23 in with you?
 24 MS. PRIVETERRE: I am not the
 25 one badgering the witness.

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1 M. Visconti
 2 MR. ZELMAN: I am not the one
 3 badgering anyone but you at this time.
 4 MS. PRIVETERRE: You can't
 5 badger anyone, let alone the deponent.
 6 MR. ZELMAN: You can't speak
 7 during the deposition. It is just that
 8 simple.
 9 MS. PRIVETERRE: He is asking
 10 you to clarify. You don't come back
 11 with, what don't you understand.
 12 MR. ZELMAN: And this is all on
 13 the record.
 14 Q. Sir, I am going to ask you
 15 again: With respect to Mr. Dikler, it was
 16 your determination, was it not, that he was in
 17 violation of the law, possession of a forged
 18 instrument in the second degree; is that
 19 correct?
 20 A. Yes.
 21 Q. That is a specific charge in the
 22 law; is that correct?
 23 A. Yes.
 24 Q. My question is: How did you
 25 determine that specific law was the law that

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1 M. Visconti
 2 he violated and not some other law?
 3 A. I was guided by the NYPD
 4 bulletin.
 5 Q. Other than the NYPD bulletin,
 6 was there any other instrument or any other
 7 influence in your determination about what the
 8 arrest charge was other than the bulletin?
 9 A. No.
 10 Q. Did someone tell you that this
 11 is what you were supposed to charge him with,
 12 you read that law or was it something else?
 13 A. No.
 14 Q. What did the bulletin say that
 15 made you determine to charge Mr. Dikler with
 16 possession of a forged instrument in the
 17 second degree?
 18 A. I don't remember specifically.
 19 Q. The same is true with respect to
 20 General Business Law Section 80?
 21 A. Yes.
 22 MS. PRIVETERRE: Objection.
 23 Q. You don't remember what
 24 specifically the instruction sheet said with
 25 regard to that, but that is where you believe

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1 M. Visconti
 2 that you got the information to charge him
 3 with that offense?
 4 A. Yes.
 5 Q. Okay. Thank you very much.
 6 A. You are welcome.
 7 Q. Do you know if the DA decided to
 8 use the arrest charges as criminal charges?
 9 A. I don't remember.
 10 Q. Did you ever become aware that
 11 criminal possession of a forged instrument in
 12 the second degree requires an intent to
 13 defraud, deceive or injure somebody?
 14 A. No.
 15 Q. Are you aware of that today?
 16 A. No.
 17 Q. Did you speak to Security
 18 Officer Wilson Vega regarding Mr. Dikler?
 19 A. I don't remember.
 20 Q. Do you know if he told you
 21 anything about what had happened?
 22 A. I don't remember.
 23 MR. ZELMAN: Please mark this
 24 as Plaintiffs' Exhibit 1 for
 25 identification.

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1 M. Visconti
 2 (Plaintiffs' Exhibit 1, document
 3 dated March 22, 2006 marked for
 4 identification, as of this date.)
 5 Q. I would ask you and your counsel
 6 to take a look at that.
 7 MR. SILVERMAN: May I see that
 8 too?
 9 MS. PRIVETERRE: Sure.
 10 Q. Is that your signature on the
 11 bottom of that page?
 12 A. Yes.
 13 Q. And you signed that on 3/22/06?
 14 A. Yes.
 15 Q. Before you signed that, you read
 16 this document?
 17 A. Yes.
 18 Q. On the first paragraph of the
 19 document, it indicates that Mr. Dikler had an
 20 intent to defraud, deceive and injure another;
 21 is that correct?
 22 A. Yes.
 23 Q. And you also indicated that you
 24 were informed by Mr. Vega that the informant
 25 recovered a forged New York City Police

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1 M. Visconti
 2 Department detective-type shield; is that
 3 correct?
 4 A. Yes.
 5 Q. And it was recovered from inside
 6 the detective's jacket?
 7 A. Yes.
 8 Q. That is what the document says?
 9 A. Yes.
 10 Q. Did he indicate that he had
 11 recovered a forged detective-style shield?
 12 A. I don't remember if I spoke to
 13 him specifically.
 14 Q. If he denies that he said that,
 15 would you believe that is incorrect?
 16 MS. PRIVETERRE: Objection.
 17 MR. SILVERMAN: Objection to
 18 the form.
 19 A. No.
 20 Q. Do you recall if Mr. Vega ever
 21 in writing advised you that he recovered a
 22 forged New York City police detective-style
 23 shield?
 24 A. I think that was in the report
 25 that I indicated earlier.

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1 M. Visconti
 2 Q. Did Mr. Vega ever express an
 3 opinion about whether the shield was forged?
 4 A. Not that I know.
 5 Q. Is there anything else about
 6 this particular arrest that you recall that I
 7 have not asked you about?
 8 A. No.
 9 Q. Did you place handcuffs on Mr.
 10 Dikler?
 11 A. Yes.
 12 Q. How long was he in handcuffs
 13 for?
 14 A. I don't know.
 15 Q. Do you know how long he was in
 16 custody for?
 17 A. A few hours. I am not sure.
 18 Q. Did you transport him to central
 19 booking?
 20 A. I don't remember.
 21 Q. Do you remember being at central
 22 booking that day, March 22?
 23 A. I don't remember.
 24 Q. Do you remember anything that he
 25 told you?

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1 M. Visconti
 2 A. No.
 3 Q. Did you speak to any civilian
 4 witnesses about this event?
 5 A. I don't remember.
 6 Q. And you never spoke to his
 7 employer about this?
 8 A. No.
 9 MR. ZELMAN: Please mark this
 10 exhibit as Plaintiffs' Exhibit 2 for
 11 identification.
 12 (Plaintiffs' Exhibit 2, document
 13 marked for identification, as of this
 14 date.)
 15 Q. I would just ask you if you
 16 recognize that document?
 17 A. No.
 18 Q. Does it have your name on the
 19 top of the page?
 20 A. No.
 21 Q. Did you write that?
 22 A. No.
 23 Q. Do you know who did?
 24 A. No.
 25 Q. Do you know what this document

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1 M. Visconti
 2 is?
 3 A. No.
 4 Q. You never saw it before?
 5 A. No.
 6 Q. Do you believe that you
 7 completed this document?
 8 A. No.
 9 Q. The shield that was recovered
 10 from Mr. Dikler, do you know if it was ever
 11 given back to him?
 12 A. No.
 13 Q. You don't know?
 14 A. No.
 15 Q. The shield that was recovered
 16 from Mr. Dikler, do you recall if it had an
 17 identifying number on it?
 18 A. I think so, but I am not sure.
 19 Q. That identifying number, was
 20 that ever corresponded to Mr. Dikler's
 21 employment at the Transit Authority?
 22 MS. PRIVETERRE: Objection.
 23 MR. SILVERMAN: Objection.
 24 MR. PRIVETERRE: Objection to
 25 the form.

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1 M. Visconti
 2 A. I don't remember.
 3 Q. You understand the question,
 4 though?
 5 A. Yes.
 6 Q. Have you ever had a discussion
 7 at the Internal Affairs Bureau about,
 8 generally, a policy of inspecting badges at 26
 9 Federal Plaza?
 10 A. I don't understand the question.
 11 Q. At internal affairs with your
 12 colleagues or supervisor have you ever had a
 13 discussion about the fact there is a policy of
 14 inspecting badges at 26 Federal Plaza?
 15 A. Yes.
 16 Q. Is it common knowledge at
 17 internal affairs that anybody who goes through
 18 26 Federal Plaza and has a badge, that badge
 19 will be examined?
 20 MS. PRIVETERRE: Objection.
 21 A. I don't understand the question.
 22 Q. In general, at internal affairs,
 23 what is discussed specifically regarding 26
 24 Federal Plaza regarding badges?
 25 A. Now?

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1 M. Visconti
 2 Q. Yes.
 3 A. Today?
 4 Q. Or in 2006.
 5 A. I don't understand.
 6 Q. Is it a fairly typical
 7 assignment for an internal affairs
 8 investigator to have to report to 26 Federal
 9 Plaza in 2003 or 2004, in order to inspect the
 10 shield or badge?
 11 MS. PRIVETERRE: Objection to
 12 the form.
 13 You could answer the question,
 14 if you understand it.
 15 A. Not necessarily.
 16 Q. But this was the first time you
 17 did an arrest at 26 Federal Plaza; is that
 18 correct?
 19 A. That I remember.
 20 Q. Did you ever speak to other
 21 colleagues if they had performed an arrest at
 22 26 Federal Plaza with regard to similar shield
 23 or badge issues?
 24 A. Yes.
 25 Q. How many other times have you

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1 M. Visconti
 2 had any other discussion with other people at
 3 internal affairs?
 4 A. I don't remember.
 5 Q. Do you have any idea how many
 6 other people got stopped at 26 Federal Plaza
 7 with respect to their badges?
 8 A. I don't know.
 9 Q. Do you know if it was more than
 10 100?
 11 A. I don't know.
 12 Q. Do you know if any other persons
 13 were arrested on March 22, 2006, with respect
 14 to carrying a badge at 26 Federal Plaza?
 15 A. I don't know.
 16 Q. Would it surprise you to learn
 17 that 20 people that day were arrested at 26
 18 Federal Plaza for the same thing?
 19 MS. PRIVETERRE: Objection to
 20 the form.
 21 A. Could you ask the question
 22 again? I don't understand it.
 23 Q. Would this be unusual in your
 24 opinion, that 20 people got arrested in one
 25 day for carrying badges at 26 Federal Plaza?

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1 M. Visconti
 2 A. Yes.
 3 Q. Would that be very unusual?
 4 A. Yes.
 5 Q. What about five people, would
 6 that be unusual?
 7 A. The question, it is not -- there
 8 is no specific answer.
 9 Q. Are you aware of a policy of
 10 arrest at 26 Federal Plaza with respect to
 11 badges?
 12 A. Yes.
 13 Q. What is that policy?
 14 A. At 26 Federal Plaza, if someone
 15 would go into 26 Federal Plaza with a shield
 16 they would notify my office.
 17 Q. Are you aware of any other
 18 facility that has that policy, that when
 19 anyone comes into the facility with a badge,
 20 they are going to notify internal affairs?
 21 A. My unit is notified in regard to
 22 all shields.
 23 Q. My question is this, with
 24 respect to the policy, are you aware of
 25 another facility, a federal facility or a

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1 M. Visconti
 2 state facility or some other type of facility
 3 that if someone comes in with a badge they
 4 would call internal affairs?
 5 MS. PRIVETERRE: Objection.
 6 A. Yes.
 7 Q. What other facility?
 8 A. One Police Plaza.
 9 Q. Any other facility?
 10 A. I don't know.
 11 Q. Where did you first learn about
 12 the policy that 26 Federal Plaza had?
 13 A. Where?
 14 Q. Yes.
 15 A. At my office.
 16 Q. How did you learn that? Did
 17 someone tell you? Did you read a memo? Did
 18 you receive a phone call?
 19 A. I was informed by a supervisor.
 20 Q. Do you remember which supervise
 21 told you about it?
 22 A. No.
 23 Q. Pursuant to that policy of
 24 inspecting badges at 26 Federal Plaza, are you
 25 aware of approximately how many arrests had

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1 M. Visconti
 2 taken place?
 3 A. No.
 4 Q. Do you remember when that policy
 5 began?
 6 A. No.
 7 Q. Is it safe to say that Mr.
 8 Dikler's arrest was not the only arrest for
 9 violation of that policy?
 10 A. Yes.
 11 MS. PRIVETERRE: Objection to
 12 the form.
 13 Q. Can you estimate how many more
 14 people were arrested?
 15 A. No.
 16 MR. ZELMAN: No further
 17 questions. Thank you.
 18 MR. SILVERMAN: I have no
 19 questions. Thank you.
 20 THE WITNESS: Thank you.
 21
 22 (Whereupon, at 1:15 p.m., the
 23 examination of the witness was
 24 concluded.)
 25

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1 M. Visconti
 2 MICHAEL VISCONTI
 3 Subscribed and sworn to
 4 before me this ____ day
 5 of _____, 2008.
 6
 7 _____
 8 Notary Public
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C E R T I F I C A T I O N

I, MINDY CORCORAN, hereby
 certify that the within was held before
 me on the 21st day of May, 2008.

That the testimony was taken
 stenographically by myself.

That the within transcript is a
 true and accurate record.

That I am not connected by blood
 or marriage with any of the parties. I
 am not interested directly or indirectly
 in the matter in controversy.

IN WITNESS WHEREOF, I have
 hereunto set my hand this 21st day of
 May, 2008.

MINDY CORCORAN

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1	I N D E X
2	
3	WITNESS: MICHAEL VISCONTI
4	EXAMINATION PAGE
5	By Mr. Zelman 5
6	
7	PLAINTIFFS'
8	EXHIBITS DESCRIPTION PAGE
9	1 Document dated March 22,
10	2006 80
11	2 Document 83
12	
13	DIRECTIONS
14	PAGE LINE
15	(None)
16	
17	REQUESTS
18	
19	PAGE LINE
20	
21	(None)
22	
23	
24	
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1	
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3	
4	ERRATA SHEET FOR TRANSCRIPT
5	
6	PAGE/LINE CORRECTION
7	_____
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1 _____

2 MICHAEL VISCONTI

3 Subscribed and sworn to

4 before me this _____

5 day of _____, 2008.

6

7 NOTARY PUBLIC